

**ANNUAL REPORT
OF THE
COMMISSION ON COURTS**



**Indiana Legislative Services Agency
200 W. Washington Street, Suite 301
Indianapolis, Indiana 46204**

October, 2003

INDIANA LEGISLATIVE COUNCIL

2003

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COMMISSION ON COURTS

Membership Roster

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Robert Kuzman, Chairperson
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Noblesville

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Martinsville

David Long
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Anderson

Lay Members

Chief Justice Randall Shepard
Indianapolis

Honorable Ernest Yelton
Brazil

David Lewis
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Honorable Tim Curley
Terre Haute

Staff

Andrew Roesener
Attorney for the Commission

Mark Goodpaster
Fiscal Analyst for the Commission

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.state.in.us/legislative/>.

I. STATUTORY DIRECTIVE

The Indiana General Assembly enacted legislation directing the Commission to do the following:

IC 33-1-15-7 The Commission on Courts shall do the following:

- (1) Review and report on all requests for new courts or changes in jurisdiction of existing courts. A request for review under this subdivision must be received by the Commission not later than July 1 of each year. A request received after July 1 may not be considered unless a majority of the Commission members agree to consider the request.
- (2) Conduct research concerning requests for new courts or changes in jurisdiction of existing courts. This research may include the conduct of surveys sampling members of the bar, members of the judiciary, and local officials to determine needs and problems.
- (3) Conduct public hearings throughout Indiana concerning requests for new courts or changes in jurisdiction of existing courts. The Commission shall hold at least one (1) public hearing on each request presented to the Commission.
- (4) Review and report on any other matters relating to court administration that the Commission determines appropriate, including the following:
 - (A) Court fees.
 - (B) Court personnel, except constables that have jurisdiction in a county that contains a consolidated city.
 - (C) Salaries of court officers and personnel, except constables that have jurisdiction in a county that contains a consolidated city.
 - (D) Jury selection.
 - (E) Any other issues relating to the operation of the courts.
- (5) Submit a report before November 1 of each year to the general assembly that includes the following:
 - (A) A recommendation on all requests considered by the Commission during the preceding year for the creation of new courts or changes in the jurisdiction of existing courts.
 - (B) If the Commission recommends the creation of new courts or changes in jurisdiction of existing courts, the following:
 - (i) A draft of legislation implementing the changes.
 - (ii) A fiscal analysis of the cost to the state and local governments of implementing recommended changes.
 - (iii) Summaries of any research supporting the recommended changes.
 - (iv) Summaries of public hearings held concerning the recommended changes.
 - (C) A recommendation on any issues considered by the Commission under subdivision (4).

II. SUMMARY OF WORK PROGRAM

The Commission met on August 14, 2003 and heard testimony on the following topics: (1) The need for additional courts or judicial officers in Vigo, Howard, Hamilton, DeKalb, Madison, Perry, and Owen counties. (2) The 2002 Weighted Caseload Statistical Report. (3) The need for a senior judge in the Indiana Tax Court. (4) Judicial retirement benefits.

The Commission met on September 25, 2003 and heard testimony on the following topics: (1) The need for new courts in Dearborn and Montgomery counties. (2) Changes in bankruptcy exemption levels. (3) A judicial pay raise. (4) The costs of certified mail in court actions. (5) Approval of a senior judge for the Indiana Tax Court. The Commission also approved this final report.

III. SUMMARY OF TESTIMONY

Requests for Additional Courts or Judicial Officers

Vigo County

Representative Clyde Kersey asked the Commission to recommend an additional superior court for Vigo County. Representative Kersey noted that the local prosecutor, bar association, sheriff and county council all approve of the additional court and the county commissioners are currently renovating an area for use as a courtroom.

Howard County

Jim Martin (Howard County Bar Association) asked the Commission to recommend an additional superior court for Howard County. Mr. Martin stated that a courtroom has already been constructed and is ready for use.

Hamilton County

Polly Pearce (Hamilton County Court Administrator) asked the Commission to recommend an additional superior court for Hamilton County.

DeKalb County

Representative Kuzman stated that representatives from DeKalb County contacted him prior to the August 14th meeting to request that the Commission recommend an additional superior court. Representative Kuzman stated the Commission had approved an additional superior court for DeKalb County during the 2002 interim and that a favorable recommendation was the presumption for this year.

Madison County

Senator Lanane asked the Commission to recommend a magistrate to serve the

Madison County Superior Court. Senator Lanane explained that Madison County had previously addressed the shortage of judicial officers by employing part-time magistrates at county expense. He noted that this was no longer feasible due to an Indiana Supreme Court ruling prohibiting the part-time magistrate from acting as defense counsel in any criminal case before the unified superior court.

Perry County

Judge Jim McEntarfer (Perry Circuit Court) asked the Commission to recommend an additional superior court for Perry County.

Owen County

Representative Kuzman stated the Commission had approved a magistrate for the Owen Circuit Court during the 2002 interim and that a favorable recommendation was the presumption for this year.

Dearborn County

Judge Michael Witte (Dearborn Superior Court) asked the Commission to recommend an additional superior court for Dearborn County.

Montgomery County

Representative Tim Brown asked the Commission to recommend abolishing the Montgomery County Court and endorse the creation an additional superior court. Also appearing before the Commission was Judge Peggy Lohorn (Montgomery County Court).

2002 Weighted Caseload Statistical Report

Ron Miller (Director of Trial Court Management for the Division of State Court Administration) provided an update regarding the preparation of the 2002 Weighted Caseload Statistical Report. Mr. Miller gave an overview of the contents of the 2003 report and explained that the methodology used to compile the 2003 report is identical to the methodology used to compile previous reports. He noted that compilers of the current report reviewed approximately 14,000 judicial time entries and examined approximately 3,500 randomly selected case files. Mr. Miller stated that the Judicial Administration Committee and the Indiana Judicial Center hired a consultant to review the report and the consultant concluded the report is statistically valid.

Senior Judge for Indiana Tax Court

Judge Thomas G. Fisher of the Indiana Tax Court asked the Commission to consider amending current law to allow for the appointment of a senior judge to the Indiana Tax Court. Judge Fisher stated he currently has 90 cases under advisement and a senior judge would be the most cost effective manner to reduce the backlog.

Judicial Retirement Benefits

Judge Ernest Yelton asked the Commission to reconsider SB 429 (2003). Judge Yelton

explained that SB 429 removes a provision that prohibits a retired judge from receiving judicial retirement benefits if the judge is receiving a salary from the state for services performed.

Changes in Bankruptcy Exemption Levels

____ Mark Zuckerberg (Attorney), Steve Ancel (Attorney), Elliot Levin (Attorney) and Professor Thomas Allington (Indiana University School of Law-Indianapolis) urged the Commission to amend the exemption levels under IC 34-55-10. A draft of proposed amendments to exemption levels was provided to the Commission.

Judicial Pay Raise

____ Judge Nancy Vaidik (Indiana Court of Appeals) addressed the Commission regarding judicial pay adjustments. Judge Vaidik asked the Commission to approve the following three measures to adjust judge's pay:

(1) Require litigants in criminal and civil cases to pay a \$12 judicial salaries fee in order to increase judicial salaries as follows:

(A) Each full time judge of a circuit, superior, municipal, county, or probate court would receive an annual salary of \$111,384.

(B) Each judge of the Indiana Court of Appeals would receive an annual salary of \$132,804.

(C) Each justice of the Indiana Supreme Court would receive an annual salary of \$137,904.

(2) Create a public officers compensation commission. This commission would make biennial salary recommendations for public officers (including judges) to the Legislative Council and the Budget Committee.

(3) Provide an automatic annual salary increase for judges that is equivalent to the average percentage annual salary increase received by state employees of the executive branch in each state fiscal year that a salary increase is not legislatively enacted for judges.

Costs of Certified Mail in Court Actions

____ Deb Arnett (Steuben County Clerk) explained how the costs of certified mail in civil proceedings are placing an increasing financial burden on Steuben County. She supported the imposition of an additional fee in civil proceedings to offset the costs of certified mail.

IV. COMMITTEE FINDINGS AND RECOMMENDATIONS

The Commission recommended additional courts for the following counties:

(1) Vigo County. (2) Howard County. (3) Hamilton County. (4) DeKalb County.
(5) Perry County. (6) Dearborn County. (7) Montgomery County.

The Commission recommended a magistrate for the following counties:

(1) Madison County. (2) Owen County.

The Commission recommended the following:

- (1) A senior judge for the Indiana Tax Court.
- (2) Each of the judicial pay adjustment proposals.
- (3) Increasing exemption levels under IC 34-55-10 (but the Commission did not recommend the submitted amendments).
- (4) The imposition of a \$10 service fee to offset the costs to counties created by certified mail in civil actions.
- (5) The judicial retirement benefits described in SB 429 (2003)

WITNESS LIST

Ron Miller (Director of Trial Court Management /Division of State Court Administration)

Judge Thomas G. Fisher (Indiana Tax Court)

Representative Clyde Kersey

Jim Martin (Howard County Bar Association)

Judge Lynn Murray (Howard County Circuit Court)

Bill Menges (Howard County Chief Public Defender)

Polly Pearce (Hamilton County Court Administrator)

Landon Sorrell (Madison County Court Administrator)

Judge Jim McEntarfer (Perry Circuit Court)

Judge Nancy Vaidik (Indiana Court of Appeals)

Judge Michael Witte (Dearborn Superior Court)

Representative Tim Brown

Judge Peggy Lohorn (Montgomery County Court)

Mark Zuckerberg (Attorney)

Steve Ancel (Attorney)

Professor Thomas Allington (Indiana University School of Law-Indianapolis)

Elliot Levin (Attorney)

Deb Arnett (Steuben County Clerk)